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ADMINISTRATIVE LAW

SUPPLEMENTAL MATERIALS

VOLUME II

COLLEEN FLOOD

FACULTY OF LAW
UNIVERSITY OF TORONTO
2005

ADMINISTRATIVE LAW

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September-December 2005
8.45 am – 10.35 am
Tuesday/Thursday

Professor Colleen M. Flood
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Office hours: Mondays 3-5 p.m. or by appointment

ADMINISTRATIVE LAW
[LAW 202H1F]

SYLLABUS

Materials:

- David J. Mullan, *Administrative Law* (Toronto: Irwin, 2001) (available in the bookstore).
- Colleen M. Flood, Administrative Law, Fall 2005, Supplemental Materials (Vol. I, II and III)
- Additional materials to be distributed via email and in class

Additional Reading

- Sara Blake, Administrative Law in Canada, 3rd ed. (Markham: Butterworths, 2001)
- David J.M. Brown and John M. Evans, Judicial Review of Administrative Action in Canada (2 volumes) (Toronto: Canvasback, 1998) (a loose-leaf service)
- René Dussault and Louis Borgeat (Breen, tr.), Administrative Law - A Treatise (5 volumes), 2nd ed. (Toronto: Carswell, 1985-90).
- David Phillip Jones and Anne S. de Villars, Principles of Administrative Law, 3rd ed. (Toronto: Carswell, 1999).
- Robert W. Macaulay, Q.C. and J.L.H. Sprague, Practice and Procedure Before Administrative Tribunals (Toronto: Carswell, 1988-) (a loose leaf service).

Evaluation:

- Exam, open-book, 100% final **OR**
- Three written (15 pages each) assignments (designed to survey the principal elements of the course) due the same day as the examination (December 14th, a.m.)

Students Living with Disabilities:

Students with permanent or temporary disabilities who would like to discuss classroom or evaluation accommodations are asked to come and see me as soon as possible. You can meet me after class or privately during office hours.

Readings

Students are expected to have read all assigned readings, even if not specifically covered in class. The assigned reading MAY be changed to match the pace of the class and to enable closer focus on particular points.

Make-up Class

A make-up class will be held on Friday, October 14th due to the number of classes that have to be cancelled because of holidays falling either on a Tuesday or a Thursday.

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INTRODUCTION: Baker

Tuesday, September 6th

The Reach of Administrative Law ..... Chp. 1, Mullan, Irwin
Introduction to Administrative Law ..... Supp. Vol. 1 pp 1-18

Thursday, September 8th

Baker v. Canada (Minister of Citizenship and Immigration) ..... Supp. Vol 1 pp 19-43

PART I: Procedural Fairness

Tuesday, September 13th & Thursday, September 15th

Introduction ..... Supp. Vol 1 pp 44-47

I. **The Threshold** (Entitlement to Procedural Rights)

A. The Traditional Doctrine
Cooper v. Board of Works for Wandsworth Dist ..... Supp. Vol 1 pp 44-47
Nicholson v. Haldimand-Norfold ..... Supp. Vol 1 pp 48-50
Elaboration of New Doctrine… ..... Supp. Vol 1 pp 51-52

B. The Threshold Today
The Common Law 1) The Threshold ..... Mullan, Irwin, pp 156-170
Board of Education v. Knight… ..... Supp. Vol 1 pp 53-60

C. Exceptions: Legislative and Policy
A.G. Canada v. Inuit Tapirisat ..... Supp. Vol 1 pp 61-64
Homex Realty and Development Co. v. Village of Wyoming ..... Supp. Vol 1 pp 65-66
Wells v. Newfoundland ..... Supp. Vol 1 pp 67-81
G. Cartier, "Procedural Fairness in Legislative Function" ..... Supp. Vol 1 pp 82-84
D. Mullan, "The Role of the Judiciary in the Review of Administrative Policy Decisions: Issues of Legality" ..... Supp. Vol 1 pp 85-102
Canadian Assoc. of Regulated Importers v. Canada (A.G.) ..... Supp. Vol 1 pp 103-105

D. Exceptions: Interest or Benefit?
Note ..... Supp. Vol 1 pp 105-106
Re Webb and Ontario Housing Corp ..... Supp. Vol 1 pp 106 - 108
Note. ..... Supp. Vol 1 pp 108

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E. Preliminary or Non-Binding Decision-Making
Non-dispositive decisions..... Supp. Vol 1 pp 111 - 112
Re Abel and Penetanguishene Mental Health Centre.....Supp. Vol 1 pp 112 - 115

Tuesday, September 20th
F. Further Exceptions: Legitimate Expectation

The Reach of Administrative Law..... Chp. 9., Mullan, Irwin
Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)... Supp. Vol 1 pp 116 -120
R. v. North and East Devon Health Authority, ex part Coughlan..... Supp. Vol 1 pp 120 - 129

Thursday, September 22nd and Tuesday, September 27th
G. Constitutional Dimensions

The Reach of Administrative Law..... Chp. 10., Mullan, Irwin
Authorson v. Canada (Attorney General)..... Supp. Vol 1 pp 130 - 141
Singh v. Minister of Employment and Immigration..... Supp. Vol 1 pp 142 - 149
Notes (re G (J))..... .Supp. Vol 1 pp 150 - 153
Blencoe v. British Columbia (Human Rights Commission) (1998)..... ...Supp. Vol 1 pp 154 - 191
Chaoulli v. Quebec..... Supp. Vol 1 pp 192 - 205

Thursday, September 29th

II. **Choice of Procedures**

A. Introduction

The Content.....Mullan, Irwin, pp. 171-186
Baker v. Canada (Minister of Citizenship and Immigration).....Supp. Vol 1 pp 19 - 43
Suresh v. Canada (Minister of Citizenship and Immigration).....Supp. Vol 1 pp 206 - 237
Ahani v. Canada (Minister of Citizenship & Immigration)..... Supp. Vol 1 pp 238 - 244

B. General Statutes About Procedures

Statutory Procedural Codes ..... Chapter 11, Mullan, Irwin
S.P.P.A.....Supp. Vol 1 pp 245 - 272
J. Maciura & R. Steinecke, *The Annotated Statutory Powers and Procedures Act*).....Supp. Vol 1 pp 273 - 280

Note there is no class on Tuesday Oct 4th (Rosh Hashanah) or on Thursday October 6th (Student Off-Campus Summer Job Interviews)

Tuesday, October 11th

C. Specific Procedures

1. Pre-Hearing issues

(a) Notice ..... Supp. Vol 1 pp 281 - 284
(b) Discovery ..... No assigned readings
(c) Delay
Blencoe v. British Columbia (Human Rights Commission) ... Supp. Vol 1 pp 154 – 158, 173 - 191

2. The Hearing

(a) Oral Hearings
The Nature of Hearings ..... Mullan, Irwin, pp. 171-186
Masters v. Ontario Notice ..... Supp. Vol 1 pp 285 - 286
Kahn v. University of Ottawa ..... Supp. Vol 1 pp 287 - 314

(b) Right to Counsel
Representation ..... Mullan, Irwin, pp 262 - 265
New Brunswick (Minister of Health and Community Services) v. G. (J.)... Supp. Vol 1 pp 315 - 334

(c) Disclosure
Disclosure ..... Mullan, Irwin, pp. 238-244
Pritchard v. Ontario (Human Rights Commission) ..... Supp. Vol 1 pp 335 - 343
Haghighi v. Canada (Minister of Citizenship and Immigration) ..... Supp. Vol 1 pp 344 - 346

(d) Official Notice ..... No assigned readings

(e) Evidence and Cross-Examination
Cross-examination ..... Mullan, Irwin, pp. 287-290

(f) Duty to Give Reasons
Cross-examination ..... Mullan, Irwin, pp. 306-319
Liang v. Canada (Minister of Citizenship & Immigration) ..... Supp. Vol 1 pp 347 - 353
Gray v. Ontario (DSP) ..... Supp. Vol 1 pp 354 - 363
R. v. Sheppard ..... Supp. Vol 1 pp 364 – 366

Note there is no class on Thursday October 13th (Yom Kippur)

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MAKE-UP CLASS TO BE HELD ON FRIDAY, OCTOBER 14TH

Friday, October 14th &Tuesday, October 18th

III. **Bias and Lack of Independence**

Bias and a Lack of Independence ..... Chp. 14., Mullan, Irwin

A. Statutory Authorization/Impartiality/Independence Tests

2747-3147 Quebec Inc. v. Quebec (Regie des permis d'alcool)..... Supp. Vol II pp 1 - 25
Ocean Port v. BC..... Supp. Vol II pp 25 - 38

B. Attitudinal Bias

Paine v. University of Toronto..... Supp. Vol II pp 39 - 41
Gale v. Miracle Food Mart..... Supp. Vol II pp 43 - 49

C. Variations in Standards

Newfoundland Telephone Company v. Newfoundland (Board of Commissioners of Public Utilities)..... Supp. Vol II pp 51 - 62

D. Independence and Impartiality
Alex Couture Inc. v. Canadian Human Rights Commission..... Supp. Vol II pp 63 - 68
C.P. Ltd. v. Matsqui Indian Band..... Supp. Vol II pp 68 - 72
Imperial Oil v. Quebec (minister of the Environment).. ..... Supp. Vol II pp 73 - 81
Bell Canada v. Canadian Telephone Employees Association..... Supp. Vol II pp 82 - 95

Thursday, October 20
IV. **Institutional Decisions**
Consultation Among Agency Members
International Woodworkers of America v. Consolidated-Bathurst Packaging Ltd.. . Supp. Vol II pp 97 - 108
Notes..... Supp. Vol II pp 109 - 109
Tremblay v. Quebec (Commission des affaires sociales)..... Supp. Vol II pp 109 - 115
Ellis-Don Ltd. v. Ontario (Labour Relations Board).. ..... Supp. Vol II pp 117 - 144

Tuesday, October 25
REVIEW OF PROCEDURAL FAIRNESS ..... Handout

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PART II: Substantive Fairness

Thursday, October 27

THE STANDARD OF REVIEW

A. CUPE

Jurisdiction ..... Chapter 3, Mullan, Irwin
Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp..Supp. Vol II pp 146 - 161

B. Post-CUPE

Union des Employés de Service v. Bibeault.... ..... Supp. Vol II pp 162 - 165

Tuesday, November 1st

C. Deviations from the Standard

Canada (Attorney General) v. Mossop ..... Supp. Vol II pp 165 - 170

D. Extending the Reach of Deference Theory: Statutory Appeals

Canada (Director of Investigations and Research, Competition Act) v. Southam .. Supp. Vol II pp 172 - 192
Law Society of New Brunswick v. Ryan.....Supp. Vol II pp 194 - 207

Thursday, November 3

E. Rearticulating the Modern Standard: The Pragmatic and Functional Approach

Pushpanathan v. Canada (Minister of Citizenship, Immigration) .... Supp. Vol II pp 208 – 252

F. Focusing on the Nature of the Question

Trinity Western University v. British Columbia College of Teachers.. ..... Supp. Vol II pp 254 - 259
Dr Q. v. College of Physicians and Surgeons of B.C.....Supp. Vol II pp 260 - 270
Barrie v. CTEA..... Supp. Vol II pp 271 - 274
Mugesera v. Canada (Minister of Citizenship and Immigration)..... Supp. Vol II pp 276 - 315

No Classes on Tuesday November 8 OR Thursday November 10 (Reading Week)

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Tuesday, November 15 & Thursday, November 17

APPLYING THE STANDARD OF REVIEW

A. Correctness

Canada (Attorney General) v. Mossop.. ..... Supp. Vol II pp 316 - 323
Nanaimo (City) v. Rascal Trucking.. ..... Supp. Vol II pp 324 - 326
Pushpanathan v. Canada (Minister of Citizenship, Immigration) ..... Supp. Vol II pp 208 – 252
Trinity Western University v. British Columbia College of Teachers.. ..... Supp. Vol II pp 254 – 259

B. Reasonableness Simpliciter

Canada (Director of Investigation and Research) v. Southam Inc.. ..... Supp. Vol II pp 172 - 192
Chamberlain v. Surrey School District No. 36.. ..... Supp. Vol II pp 327 - 353
Voice Construction Ltd. V. Construction & General Workers' Union, Local 92...Supp. Vol II pp 354 - 363

C. Patent Unreasonableness

Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp...Supp. Vol II pp 146 - 161
National Corn Growers v. Canada ..... Supp. Vol II pp 364 - 396
Toronto (City Board of Education) v. OSSTF District 15.. ..... Supp. Vol II pp 398 - 403

Tuesday, November 22

THE MISUSE OF DISCRETION
XII. <u>The Misuse of Discretion/Configuring and Structuring Discretion</u>

<u>A. Ultra Vires</u>

Suresh v. Canada (Minister of Citizenship and Immigration)..... ..... Supp. Vol II pp 404 - 409
Shell Canada Products Ltd. Vancouver (City).. ..... Supp. Vol II pp 410 - 438
C.U.P.E V. Ontario (Minister of Labour) ..... Supp. Vol II pp 440 - 482

<u>B. Unreasonableness</u>

Abuse of Discretion .....Mullan, Irwin, pp. 100-122
Baker v. Canada (Minister of Citizenship and Immigration) ..... Supp. Vol 1 pp 19-43

<u>C. Discretion and Constitutional Standards</u>

Abuse of Discretion .....Mullan, Irwin, pp. 122-132
Lalonde v. Ontario (Commission de restructuration des services de sante).. ..... Supp. Vol II pp 484 - 488
Dassonville-Trudel v. Halifax..... Supp. Vol II pp 489 - 503

<u>D. The Impact of Judicial Review on Discretion</u>

Lorne Sossin, "The Rule of Policy: Baker and the Impact of Judicial Review of Administrative Discretion.....Supp. Vol II pp 504 – 517

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Thursday, November 24 and Tuesday, November 29th

XI. **Administrative Jurisdiction and the Constitution**

A. Constitutional Basis of Judicial Review
Crevier v. A.G. of Quebec ..... Supp. Vol II pp 519 - 521

B. Courts, Tribunals and the Determination of Constitutional Rights
Jurisdiction to deal with Constitutional Issues ..... Mullan, Irwin, pp. 352-367
Cooper v. Canada (Human Rights Commission) ..... Supp. Vol II pp 522 - 551
Nova Scotia (Workers' Compensation Board) v. Martin ..... Supp. Vol II pp 553 - 567
Okwuobi v. Lester B. Pearson School Board ..... Supp. Vol II pp 568 - 589

Thursday, December 1
Standing ..... Mullan, Irwin, pp. 445-59
Exhaustion and Collateral Attack ..... Mullan, Irwin, pp. 465-70
Remedies ..... Mullan, Irwin, pp. 401-423&504-522

Tuesday, December 6 & Thursday, December 8

REVIEW ..... Handout